IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION Nos : 3969 and 3970 of 2004

1}WRIT PETITION NO. 3969 OF 2004

Between:

1 B.Sangameswar, s/o B.Ramulu,
Working as Dy.Executive Engineer (PH), Qutubullapur Municipality,
Ranga Reddy District.
2 G.Rameswar Rao, s/o Balakistaiah,
Working as General Manager (Own Pay) Project Division-V, Goshamahal,
HMWs & SB, Hyderabad.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, rep., by its Principle Secretary,
Municipal Administration and Urban Development Dept., Secretariat Buildings,
Hyderabad-500 022.
2 The Engineer-in-Chief, Public Health, Kashana A.C.Guards,
Hyderabad-500 004.
3 D.Janardhan Reddy, s/o D.Gopal Reddy,
Dy.Executive Engineer, o/o the Superintending Engineer-I, MCH,
Tankbund, Hyderabad.
4 Y.V.Srinivasa Rao, s/o Y.M.V.Ramanaiah,
Dy.Executive Engineer, o/o Superintending Engineer-II,
MCH, Hyderabad.

5 A.Dattatreya, s/o A.Mallaiah,
Dy.Executive Engineer, o/o Superintending Engineer (P),
6th Floor, MCH, Hyderabad.

6 R.Sudhakar, s/o R.Rama Krishna Rao,
Dy.Executive Engineer, o/o Executive Engineer, Circle No.III,
Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly in the nature of writ of mandamus a) to declare that the preference given to Post-Graduate qualification to the Asst.Executive Engineers for the purpose of promotion to the Post-Graduate Dy.Executive Engineers under THE ANDHRA PRADESH PUBLIC HEALTH AND MUNICIPAL ENGINEERING SERVICE RULES issued through G.O.Ms.No.168 MA Dt.20-02-1965 as amended both under the amendments to the Special Rule issued through G.O.Ms.No.202 Municipal Administration & Urban Development Dept., dt.14-08-1997 continue to operate. b) The judgment of the Division Bench of this Hon'ble Court dt.12-10-2001 in WP No.23668/2000 {(2002 Supp.(1) ALD 155)} has to be understood and interpreted that in so far as the preference to Post-Graduate Asst.Executive Engineers for the purpose of Promotion to the post of Dy.Executive Engineers remain unaffected and the Division Bench only struck down the promotion/transfer of Municipal A.E.E./A.E. to the post of Dy.Executive Engineer in the A.P.Public Health & Municipal Engineering Service Rules as being violative of the provisions of the Presidential orders. c) To declare that the petitioners are entitled to be given preferential treatment for their post-graduate qualification for the purpose of promotion of Dy.Executive Engineer in accordance with G.O.Ms.No.168 MA dt.20-02-1965 as amended both under the amendments to the Special Rules issued through G.O.Ms.No.202 Municipal Administration & Urban Development Dept., dt.14-08-1997 and be given seniority in the post of Dy.Executive Engineer accordingly. d) To call for the records connected with the judgment dt.20-02-2004 in O.A.No.10422/2002 of the A.P.Administrative Tribunal set aside the same or order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.P.BALA KRISHNA MURTHY

Counsel for the Respondent Nos.1 & 2: Government Pleader for Services-I.

Counsel for Respondents 3 to 6: Mr. J.R. Manoher Rao

2. WRIT PETITION NO : 3970 of 2004

Between:

1 B.Sangameswar, s/o B.Ramulu, Working as Dy.Executive Engineer (PH),
Qutubullapaur Municipality, Ranga Reddy District

2 G.Rameswar Rao, s/o Balakistaiah, Working as General Manager(own pay) Project Division_V, Ghoshamahal, HMWs & SB, Hyderabad

..... PETITIONERS

AND

1 The Government of AP, rep by its Principal Secreetary, Municipal Administraton & Urban Development Dept.,
Secretariat Buildings, Hyderabad-500 022
2 The Engineer-in-Chief, Public Health, Kashana A.C.Guards, Hyderabad-500 004
3 M.A.Kaleem, s/o M.A.Razzak, Dy. Executive Engineer, P.H.Sub-Division, Water Tank, Medak Road,
Siddipet, Medak District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus a) To declare that the preference given to Post-Graduate qualification to the Asst. Executive Engineers for the purpose of promotion to the Post-Graduate Dy. Executive Engineers under THE ANDHRA PRADESH PUBLIC HEALTH AND MUNICIPAL ENGINEERING SERVICE RULES issued through G.O.Ms.No.168 MA dated 20-02-1965 as amended both under the amendments to the Special Rule issued through G.O.Ms.No.202 Municipal Administration & Urban Development Department, dated 14-08-1997 continue to operate. b) The Judgment of the Division Bench of this Hon'ble Court dated 12-10-2001 in W.P. 23668/2000 (2002Supp. (1) ALD 155) has to be understood and interpreted that in so far as the preference to Post-Graduate Asst.Executive Engineers for the purpose of promotion to the post of Dy. Executive Engineers remain unaffected and the Division Bench only struck down the promotion/ transfer of Municipal A.E.E. / A.E. to the post of Dy. Executive Engineer in the A.P.Public Health & Municipal Engineering Service Rules as being violative of the provisions of Presidential Orders. c) To declare that the petitioners are entitled to be given preferred treatment for their post-graduate qualification for the for the purpose of promotion of Dy. Executive Engineer in accordance with G.O.Ms.No.168 MA dated 20-02-1965 as amended both under the amendments to the Special Rule issued through G.O.Ms.No.202 Municipal Administration & Urban Development Department, dated 14-08-1997 and be given seniority in the post of Dy. Executive Engineer accordingly. d) To call for the records connected with the judgment dated 20-02-2004 in O.A.No.9811 of 2002 of the A.P. Administrative Tribunal set aside the same or order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.P.BALA KRISHNA MURTHY

Counsel for the Respondent Nos 1 and 2.: GP FOR SERVICES I

Counsel for Respondent No.3: Mr. J.R. Manohar Rao

The Court made the following:

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COMMON ORDER: (PER GB.J)

(1). Both the writ petitions are filed assailing the orders passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.Nos.10422 and 9811 of 2002 dated 20.2.2004. The respondents 3 to 6 in the writ petition are the applicants before the Tribunal. The said O.A.s were filed for quashing G.O.Ms.No.151 M.A. and U.D. Department dated 4.4.2002.

(2). The matter has a long history. The petitioners were appointed in the years 1989 and 1992 respectively. They acquired the Post-Graduate qualification in Public Health Engineering (Environmental Engineering). They were initially appointed as junior Engineers now redesignated as Assistant Executive Engineers. At the relevant time, the Special Rules called “The Andhra Pradesh Public Health and Municipal Engineering Service Rules” (for brevity ‘the Rules), issued under proviso to Art.309 of the Constitution of India, were in vogue and the Rules were framed under G.O.Ms.No.168 M.A. dated 20.2.1965. The Rules provided for preferential treatment for those who acquired Master of Engineering (Public Health) Degree qualification for promotion from the post of Assistant Executive

Engineer to the post of Deputy Executive Engineer. However, the Rules were amended in G.O.Ms.No.903, Public Health and Municipal Administration Department dated 24.11.1971, deleting the preferential treatment. Again, the Rules were amended in G.O.Ms.No.328, MA and UD Department dated 10.6.1994, reintroducing the preferential treatment to Post-Graduates, against the 9th vacancy in the cycle of 12 vacancies. The re-introduction appears to have been resorted to, in wake of existence of similar preferential provisions in the sister engineering departments like the A.P. Engineering Service, the A.P. Roads and Buildings Engineering Service, and the A.P. Panchayat Raj Engineering Service. In G.O.Ms.No.63 Housing, Municipal Administration & Urban Development Department dated 8.2.1977, the original rules issued in G.O.Ms.No.168 were amended and fresh cycle was introduced for the purpose of promotion to the post of Dy. Executive Engineer and for preferential treatment to the Post-Graduates was conspicuously absent. But, however, the same was re-introduced in G.O.Ms.No.328. Again, the rules were amended in G.O.Ms.No.202 MA & UD Department dated 14.8.1997 with retrospective effect from 1977, providing preference to the Post-Graduates against the 9th vacancy in the cycle of 12 vacancies.

(3). The petitioners were promoted to the post of Dy. Executive Engineers on 16.3.2000 in pursuance of preference of holding P.G. Engineering Qualification in accordance with 9th vacancy under G.O.Ms.No.202. However, the 2nd petitioner was further promoted as General Manager (Executive Engineer) on his own pay since 24th April, 2002. The amendment issued in G.O.Ms.No.202 was

questioned before the A.P. Administrative Tribunal in O.A.No.6099 of 1997, on the ground that providing a channel to the Municipal Assistant Executive Engineers/Assistant Engineers appointed under the service constituted under A.P. Municipalities Act, was repugnant to the provisions of the Presidential Order, more particularly, paragraph (5) of the said Presidential Order. The Tribunal dismissed the said O.A. When the matter was carried before this court in W.P.NO.23668 of 2000, the Division Bench struck down the amendment through G.O.Ms.No.202 on the ground that providing for promotion or by transfer for Municipal Assistant Executive Engineers/Assistant Engineers is violative of the provisions of the Presidential Order. It is stated that the issue relating to preferential treatment to the Post-Graduate engineers was not in question before the Division bench and the same was untouched. However, consequent on the orders of the Tribunal in O.A.No. 2892 of 1992, dated:: 9.4.1996, the Government issued G.O.Ms.No.151 dated 4.4.2002, directing that the preferential treatment must be given to the petitioners as per the Special Rules in G.O.Ms.No.168. The Tribunal, however, misconstruing the order of the Division Bench as if the entire G.O. was struck down, allowed the O.A.s and set aside the order passed by the Government in G.O.Ms.No.151. In fact, while the unofficial respondents were already promoted as Deputy Executive Engineers later to the petitioners i.e. on 31.3.2000 and 23.8.2000, the petitioners were promoted on 16.3.2000.

(4). Aggrieved by the said order of the Tribunal, the present writ petitions have been preferred by the petitioners.

(5). It is the contention of Mr. P. Balakrishna Murthy, learned counsel for the petitioners, that the Tribunal has thoroughly misconstrued the service rules, which were amended from time to time. He further submits that the OAs, as filed by the unofficial respondents herein before the tribunal, were not maintainable as they have no *locus standi* to file the OAs since they cannot be said to be affected party in any manner. While the petitioners belong to Zone-VI, the unofficial respondents belong to other zones. The post of Deputy Executive Engineer is a zonal post. Any promotions given in Zone-VI or any alteration of seniority or other dates cannot be said to give a cause of action to the officers working in the other zones. If at all aggrieved persons are there, they should be only in Zone-VI. Inasmuch as G.O.Ms.No.151 was not challenged by any person working in Zone-VI, the OAs as filed by the unofficial respondents who were borne on the establishment of other zone, is wholly misconceived and the Tribunal ought to have dismissed the OAs on this ground alone. Even on merits also, the learned counsel would submit that giving preferential treatment for holding higher qualification in service was approved by the Supreme Court in number of cases. He refers to the decision of the Apex Court reported in GOVERNMENT OF ANDHRA PRADESH V. B. DILIP KUMAR ([1].) and also the decision of the Division Bench reported in G. GOPAL RAO AND OTHERS V. GOVERNMENT OF A.P. ([2].). The learned counsel would submit that the decision of the Division Bench in W.P.No.23668 of 2000 dated 12.10.2001 cannot be said to be completely eliminating the preferential treatment to the Post-Graduates in Engineering. He also refers to the decision of the Supreme Court reported in V. JAGANNATHA RAO AND OTHERS V. STATE OF A.P. AND

OTHERS (3.) and also of the Division Bench reported in M. KESAVULU AND OTHERS V. STATE OF A.P. AND OTHERS (4.), in respect of the Presidential Order. Therefore, the learned counsel would submit that the order of the Tribunal is liable to be set aside and the G.O.Ms.No.151 has to be restored.

(6). On the other hand, Mr. J.R. Manohar Rao, learned counsel appearing for the unofficial respondents, submits that G.O.Ms.No.168 had undergone several changes right from year 1965 and since the preferential treatment given to the Post-Graduate decree holders is no more on the service rules, the petitioners are not entitled for any relief and the order of the Tribunal was quite legal and valid. He further stated that under Rule 6 of the Rules issued vide G.O.Ms.No.168, preference was given to the Post-Graduates in the matter of appointment to the post of Assistant Engineer (presently re-designated as Dy. Executive Engineer). However, the said Rule 6 was challenged and the Division bench of this court in W.A.No.324 of 1969 struck down the same as unconstitutional. Consequently, the Government issued G.O.Ms.No.903 deleting the preferential clause in Rule 6 of A.P. Public Health and Municipal Engineering Services. On 8.2.1977, Rule 3 of the said rules was amended in G.O.Ms.No.63. According to the said amendment, the 4th and 8th vacancy, out of cycle of 12 vacancies, are to be filled by direct recruitment from the Municipal Assistant Engineers. However, further amendment was issued on 18.6.1994, in G.O.Ms.No.328 substituting the entry against the 9th vacancy in the table under Rule 3 by providing preference to the Post-Graduates. Thus, he submits that from 18.6.1994, the preference was given to the Post-Graduates against 9th vacancy in a

cycle of 12 vacancies. It is also submitted that Rule 3 of the Rules was substituted in G.O.Ms.No.202 and the same was declared unconstitutional. Therefore, according to the learned counsel, a vacuum was created and in view of the judgment of the Tribunal, there is no provision under Rule 3 of the Rules, with regard to recruitment to the post of Dy. Executive Engineer. However, making his submissions on G.O.Ms.No.151, the learned counsel would submit that the Statutory Rule in G.O.Ms.No.903 cannot be cancelled or annulled by virtue of an administrative order passed in G.O.Ms.No.151. He further submits that the order of the Tribunal is quite legal and valid.

(7). Heard the learned counsel on either side at length.

(8). The issue that arises for consideration is whether the order passed by the Tribunal is sustainable in law. The first issue that arises for consideration is whether the unofficial respondents, who filed the said OAs, have *locus standi* to file the applications before the Tribunal. It is admitted before this court that the unofficial respondents are borne on the strength of a separate zone, other than Zone-VI, whereas the petitioners are in Zone-VI. The question that calls for consideration is whether the officers working in other than in Zone-VI, can challenge the orders passed relating to the officers working in Zone-VI. The Tribunal dealt with this matter and held that since the next promotion from the post of Dy. Executive Engineer lies to the post of Executive Engineer, and hence, the officers working in other zones have a *locus* to challenge the said orders. But, in our view, the said finding of the Tribunal is not correct. Primarily the lis is an individual grievance and not public interest litigation. Admittedly, the

post of Dy. Executive Engineer is a zonal post and any benefit given to the officer such as seniority, promotion etc., is confined to the zonal level as it is a unit for the purpose of promotion or appointment. Simply because the seniority in the zone is taken into consideration for preparation of combined seniority at the State level, it cannot be said that whatever benefit is given to an officer in one zone can be challenged by the officers in other zones. That would create any amount of anomalous situation and an unending process. Thus, we find that the principle of *locus standi* can be invoked in case a person is directly affected, but the same cannot be stretched to a situation where an officer may be remotely affected. Let us test by a single illustration. 'A' in Zone-V is senior to 'B' in Zone-VI. If 'A' is reverted and reduced in seniority in Zone-V as a measure of punishment and if on challenge the punishment is set aside, can it be said that 'B' can challenge the order setting aside the punishments on the ground that if 'A' is restored he would become senior to him. The answer should be in negative. It is not only 'B' that does not possess locus standi, but even any other employee in Zone-V can challenge the orders. Therefore, we find that the Tribunal has completely misconstrued this issue and held against the petitioners herein. Hence, we find that the OAs, as filed by the unofficial respondents in this writ petition, are not maintainable.

(9) Even considering the merits of the case, we find that the petitioners were appointed as Assistant Engineers initially and they possessed the Masters Degree in Public Health Engineering. While the unofficial respondents did not possess the Masters Degree, they appear to have been appointed earlier to the petitioners, but in a different zone. In G.O.Ms.No.168, the preference was given to the

Post-Graduates for promotion to the post of Dy. Executive Engineers. However, the said preferential treatment under Rule 6 was struck down by the Division Bench of this court in W.A.No.324 of 1969 and consequently it was deleted vide G.O.Ms.No. 903, dated: 24.11.1971. But, however, under Rule 3 of the Rules, the appointment to the post of Dy. Executive Engineer shall continue to be made by the method specified in the table. The said rule was amended by G.O.Ms.No. 63 dated: 8.2.1977 by which 4th and 5th vacancy out of cycle of 12 vacancies are to be filled by direct recruitment from Municipal Asst. Engineers. On 18.6.1994 amendment was brought in G.O.Ms.No. 328 substituting the entry against 9th vacancy by providing preference to Post Graduates against 9th vacancy. But, however, Rule 3 was substituted by G.O.Ms.No.202 dated 14.8.1997, in which the Municipal and Public Health Engineers were made eligible for promotion to the post of Deputy Executive Engineers, basing on the combined seniority list. But that Rule was struck down by the Division Bench of this court in W.P.No.23668 of 2000.

(10). It is the contention of the learned counsel for the respondents that consequent on striking down of G.O.Ms.No.202, which substituted the amendment issued to Rule 3, the G.O.Ms.No.328 also loses its enforceability, and therefore, the order passed by the Tribunal was quite legal and proper.

(11) We are unable to appreciate this contention also. The Legislature cannot be expected to create a vacuum in the Statutory Rules and as observed by the Supreme Court giving preference to the candidates having higher qualifications, cannot be said to be

unconstitutional or illegal. As rightly pointed out by the learned counsel for the petitioners Mr. P. Balakrishna Murthy, that such preferential treatment was given in contemporaneous rules in respect of Engineering service in Irrigation Department and Roads and Buildings Engineering Service, and as such, preferential treatment was upheld by the Supreme Court in Dilip Kumar's case (1 supra) and also by the Division Bench in Gopal Rao's case (2 supra). It is sought to be contended that since the Division Bench of this Court struck down G.O.Ms.No.202, there are no rules giving preference to the Post-Graduates in the matter of promotion. But, it is to be seen that in G.O.Ms.No.63 dated 8.2.1977, the amendment was brought creating cycle of 12 vacancies. The said 12 cycle under Rule 3 of the Rules was again substituted in G.O.Ms.No.328 as far as 9th cycle was concerned, which incorporated the following amendment.

> "By promotion from the Assistant Executive Engineers/Municipal Assistant Executive Engineers possessing the Post Graduate Qualification. Preference shall be given to the Post Graduate in Public Health Engineering only when all the other qualifications being equal. The senior among the said Assistant Executive Engineer/Municipal Assistant Executive Engineer shall be considered against this vacancy. If no qualified Assistant Executive Engineer/Municipal Assistant Executive Engineer is available the said vacancy shall go to the Assistant Executive Engineers or by recruitment by transfer from Additional Assistant Engineers of the Andhra Pradesh Public Health and Municipal Engineering Subordinate Service." (emphasis added)

(12). What was struck down by the Division Bench was that clubbing the Municipal Assistant Executive Engineers and Assistant Executive

Engineers in Public Health was unconstitutional as it is hit by paragraph (5) of the Presidential Order. But the preferential clause in Rule 3 as introduced in G.O.Ms.No. 328 was never challenged. In view of the fact that right from the year 1965, when the Rules were issued vide G.O.Ms.No.168, preference was being given to the Post-Graduates and subsequent amendments were brought in G.O.Ms.Nos. 903, 63, and 202 having been held as unconstitutional, we have to only hold that in view of the judgment of the Apex Court in Dilip Kumar's case (1 supra), and also of similar decision rendered by Division Bench of this Court in W.A.No.324 of 1969 (Gopal Rao's case cited 2 supra), is no more a good law. For the very same reasons, the Government has reviewed the matter and issued G.O.Ms.No.151.

(13) The Division Bench of this Court of which one of the (PSNJ) was party in W.P.NO. 5870 of 2004 and Batch dated: 26.11.2004 held that since G.O.Ms.No. 202, dated: 14.8.1997 was struck down by the Division Bench in W.P.No. 26338 of 2000 and since G.O.Ms.No. 63, dated: 8.2.1977 was substituted by G.O.Ms.No. 202, the former would not survive. Therefore, by virtue of Orders passed by both the Division Benches referred to above, the legal effect would be that the vacancies 4 and 8 in a cycle of 12 vacancies for the post of Dy. Executive Engineer get deleted and it is for the Government to replenish the cycle by providing appropriate method of appointment to 4^{th} and 8^{th} vacancies. But the Orders cannot be said to have the effect of completely wiping out the method of recruitment under Rule 3 to the post of Dy. Executive Engineer. Even according to the

petitioners the preferential clause was again inserted vide G.O.Ms.No. 328 for Post Graduates in respect of 9th vacancy with effect from 18.6.1994. The preference which was available under Rule 6 is now shifted to Rule 3 in Category 3 relating to Dy. Executive Engineer in respect of 9th vacancy. Thus, we find reference to para 6 of G.O.Ms.No. 151, dated: 4.4.02 is superfluous and unwarranted. The Tribunal observed that the statutory Rules framed in G.O.Ms.No. 903 could not be amended by administrative Order and set aside the said G.O. But, in view of conclusions we reached, even without any such amendments, the petitioners are entitled for promotion as Dy. Executive Engineer under preferential clause provided in G.O.Ms.No. 328.

(14). Under the above circumstances, we find that the order of the Tribunal in O.A.Nos. 10422 and 9811 of 2002 is not sustainable and the same stands set aside.

(15). Accordingly, the writ petitions are allowed. No order as to costs.

(JUSTICE G. BIKSHAPATHY)

(JUSTICE P.S. NARAYANA)

Date:27-12-2004

CVM & CHV

L.R. COPY: No.

That Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Twenty Seventh day of December Two Thousand and four.

ASST. REGISTRAR

//**TRUE COPY**//

SECTION OFFICER

To

1 Principle Secretary, Municipal Administration and Urban Development Department, The Government of Andhra Pradesh, Secretariat Buldings, Hyderabad-500 022.

2 The Engineer-in-Chief, Public Health, Kashana A.C.Guards, Hyderabad-500 004.

3. Mr. D. Janardhan Reddy, Dy. Executive Engineer, Office of the Superintending Engineer-I, MCH, Tank Bund, Hyderabad.

4. Mr. Y.V. Srinivasa Rao, Dy. Executive Engineer, Office of the Superintending Engineer-II, MCH, Hyderabad.

5. Mr. A. Dattlareya, Dy. Executive Engineer, Office of the Superintending Engineer (P), 6th Floor, MCH, Hyderabad.

6. Mr. R. Sudhakar, Dy. Executive Engineer, Office of the Executive Engineer, Circle No.III Abids, Hyderabad.

7.Mr. M.A. Kaleem S/o M.A. Razzak, Dy. Executive Engineer, P.H. sub-Division, Water Tank Medak Road, Siddipet, Medak District.

8. 2 CCs to Government Pleader for Services-I, High Court of A.P. Hyderabad. (OUT).

9. 2 CD copies.

10. One CC to Mr. P. Bala Krishna Murthy, Advocate.